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Abplanalp Trust Inquiry Ruled Out by U.S. in '71

By NICHOLAS GAGE

Justice Department officials overruled staff recommendations two years ago for an investigation of pricing practices of the Precision Valve Corporation, owned by Robert H. Abplanalp, the multimillionaire friend of President Nixon.

Representative Bertram L. Podell, Democrat of Brooklyn, said yesterday that he had "documents and memos which demonstrate the birth and death of an antitrust action" against Precision Valve. He said he would turn the documents over to Archibald Cox, the special Watergate prosecutor, and ask him "to make an immediate and thorough investigation of what appears to be a gross conflict of interest between the Justice Department and the Precision Valve Corporation."

Barry Grossman, assistant chief of the evaluation section of the Justice Department's Antitrust Division, the only department official involved in the case who would comment on it, said he was not aware of any outside pressure to stop the investigation. It was not initiated because it could not be justified, he said.

Investigation of the Precision Valve Corporation, which is based in Yonkers, had been recommended by the New York office of the Antitrust Division after a competitor had complained that the company was engaged in predatory pricing.

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Justice Department documents show that the New York office recommendation had been endorsed by the division's operations section in Washington, although the evaluation section opposed it.

The company was founded by Mr. Abplanalp shortly after he perfected the aerosol valve for spray cans 24 years ago. Since then it has reportedly earned him \$100-million.

The White House disclosed May 25 that Mr. Abplanalp lent Mr. Nixon \$625,000 in 1969 to buy his Spanish-style home and 26 acres of land in San Clemente, Calif., for \$1.4 million.

On Dec. 14, 1970, Mr. Abplanalp created an investment company and purchased all but 5.9 acres of the tract for \$1,249,000.

The effort to initiate an investigation of Precision's pricing policies began on April 29, 1970, when Liam S. Coonan, then with the Antitrust Division's New York office, wrote a memorandum requesting authorization for an investigation to the head of the office, Norman H. Seidler.

Mr. Coonan acted following a complaint about Precision filed with the division's office here by one of its competitors, Seaquist Valve Company.

The Seaquist complaint asserted that Precision had dominated the market in aerosol valves since the early nineties. In late 1969, the complaint said, Precision, foreseeing a decline in its position because its patent was expiring the following year, rolled back its prices and instituted a rebate program.

Under the program, Precision promised that if its sales increased in a given year by a factor between 10 per cent and 100 per cent, it would give its customers rebates graduated between 2.5 per cent and 12.5 per cent of their total purchases.

Found Violation 'Indicated'

Mr. Coonan wrote in his memorandum that an analysis of Seaquist's complaint "indicates" that Precision, which had 37.5 per cent of the market, might be violating antitrust laws by engaging "in a deliberate effort to gain the major customers of its competitors; and thus achieve monopoly powers."

On the other hand, Mr. Coonan wrote, Precision's pricing program might only be a reaction to competition and would not violate any statutes.

The way to make a determination, he wrote, was to obtain the company's records through a c.i.d. (civil investigative demand), a kind of subpoena, issued by the Justice Department.

Mr. Coonan's memorandum was forwarded to the Antitrust Division in Washington by Mr. Seidler on June 19, 1970, with a note saying he concurred that the issuance of a c.i.d. was the best way to proceed.

On July 21 Robert B. Hummel, the division's deputy chief of operations, sent a memo to Mr. Seidler authorizing "a full investigation" of Precision.

Retreats on Stand

But on Aug. 24 Mr. Hummel sent Mr. Seidler a letter retreating from the authorization.

"I had substantial doubts about the wisdom of investigating this matter, which involves a price cut to all customers, upon the complaint of a competitor," he said, adding that he was inclined to "close the matter" but would appreciate Mr. Seidler's views.

Mr. Hummel had not expressed any doubts in his first memo and he would not discuss the subject when called last Friday. In his second note he said that he agreed with a recommendation against issuing a c.i.d. made by Mr. Grossman of the evaluation section, whom he had asked to look at "the problem."

In his seven-page evaluation Mr. Grossman said that Precision's rebate program was unusual but did not constitute predatory pricing.

The program could result in lower consumer prices, he said, and Precision's competitors could fight it by adopting a similar plan of their own. Therefore it was not anticompetitive, he added.

Furthermore, he said, issuing a c.i.d. against Precision could stimulate apprehension in the industry and "rigidify an already tight oligopoly structure."

Mr. Grossman's evaluation was challenged by Hyman B. Ritchin, an economist in the division's New York office, in an analysis he wrote at the request of Mr. Seidler.

The rebate program would not result in lower consumer prices because Precision's customers were likely to treat the rebates as a windfall and not pass them on, Mr. Ritchin said. Precision's rebate program, he said, was structured so that companies with a smaller share of the market such as Seaquist could not fight its effect by adopting a similar plan.

Under Precision's rebate plan an increase of 110,666 units in the sales volume of Seaquist, for example, would force it to give a rebate of 12.5 per cent, probably wiping out the profit for the year; he said. But a similar increase in sales by Precision would bring about a rebate of only 2.5 per cent.

"This form of pricing behavior is inherently anticompetitive in the context of Precision's dominant market position," Mr. Ritchin concluded and "in this market context does constitute predatory pricing."

Analysis Forwarded

Mr. Ritchin's analysis was sent to Mr. Hummel in Washington by Mr. Seidler with a cover letter noting that Mr. Grossman himself conceded that Precision's rebate plan was unusual.

"While we should not invest resources to investigate price cutting which does not appear to be predatory," Mr. Seidler said, "I do believe the division should be alert to new forms

of price behavior which might serve to exclude competitors from the market."

On Jan. 20, 1971, Mr. Hummel sent a letter to Walker B. Comegys, then a Deputy Assistant Attorney General in the division, outlining the differences of opinion between the New York office and the division's evaluation section on the Precision matter. The letter shows that Mr. Hummel himself had been persuaded that the c.i.d. should be issued.

He said in it that he did not think that the c.i.d. would have a disturbing effect on the industry as feared by Mr. Grossman.

"After all, we are only investigating, and we have to see the company's files, to fully understand what it is doing," he wrote.

Mr. Comegys is now practicing law in Boston. Asked on Friday about the case, he said: "I do not remember the matter at all. But even if I did, it wouldn't be proper for me to comment, if there was an investigation."

Memo Advised Closing

Justice Department files on the case show a handwritten note by Mr. Comegys dated Feb. 2, 1971, at the bottom of Mr. Hummel's memo to him. According to a department source, the note says in part: "In the absence of other evidence of predatory intent, I would close this investigation on the Grossman analysis."

On the same day a memorandum was sent by Mr. Hummel to Mr. Seidler in New York saying, "Pursuant to Mr. Grossman's memorandum dated Aug. 20, 1970, you are authorized to close the captioned investigation."

It is not unusual for officials of the Antitrust Division to overrule a request in a field office for an investigation.

Officials in the division said that regional offices have considerable autonomy in purely regional cases, but that when a case is of national scope or involves a national corporation, such as Precision Valve, approval must be obtained from Washington if the regional personnel want to "go outside the office"—that is, interview witnesses.

Reached by telephone on Friday, Mr. Grossman said that he remembered the Precision case only faintly but thought that the reason for not pursuing it was the fact that predatory pricing was difficult to prove. It has been decades since the Justice Department successfully prosecuted such a case, he said.

Mr. Grossman added that he was unaware of any outside

*Podell indicted 12 Jul 73 on bribery and other charges - NYTimes 13 Jul 73, this file

pressure in the case and did not recall ever being told that a friend of the President was involved.

While documents in the Justice Department show that the Precision case went only as far as Mr. Comegys, Representative Podell said that he had an undated memorandum from Richard W. McLaren, then Assistant Attorney General in charge of the Antitrust Division, to John N. Mitchell, then Attorney General, proposing that a c.i.d. be issued to Precision.

The memo, which is not in the department's Washington files on the case, was not signed by Mr. McLaren but had his name typed at the bottom of it. It said in part:

"It is possible that the pricing and dividend [rebate] program introduced by Precision is designed to drive out competitors by setting net prices at an unreasonable level. . . . It would also appear that the dividend program invites collusion on the part of buyers to purchase only from Precision.

"It is planned to issue the proposed c.i.d. unless we hear from you within seven days."

Neither Mr. McLaren nor Mr. Mitchell could be reached for comment on the alleged memorandum.

Although the Justice Department never initiated an investigation of Precision's pricing policies, the company apparently abandoned its rebate program.

Neither Mr. Abplanalp nor his attorney, William Griffin, could be reached for comment. But Niesin Harris, president of Pitaway Corporation, the parent company of Seaquist, said Friday that about two months after Seaquist's lawyers complained to the Antitrust Division about Precision's pricing policies, Precision stopped its rebate program.

"Frankly, at the time I did not think that what we did made any difference," Mr. Harris said. "Now it could be that they heard about a possible inquiry, and because the plan wasn't paying off in a big way they just dropped it. All I know is that since they dropped the scheme, we have done rather well and they have lost a lot of their share of the market."

To Ask About Dismissal

Representative Podell said he would ask Mr. Cox to determine why an investigation of Precision by the Antitrust Division, "once approved, was thereafter killed and what was the consideration, if any."

Mr. Podell himself is currently the subject of a Federal grand jury investigation involving the possible conflict of interest.

The case concerns an allegation that Mr. Podell, who is a lawyer, represented a Florida airline before the Civil Aeronautics Board in violation of a Federal law prohibiting members of Congress from representing clients before Government agencies.

Mr. Podell has said that he met with the C.A.B. officials in the role of a Congressman representing a constituent, not as a paid attorney, and he was not guilty of any wrongdoing.

"I committed what I consider an indiscretion," he has said.